

Senate Bill 310  
02/09/09

SENATE LOCAL GOVERNMENT  
EXHIBIT NO. 2  
DATE 2.9.09  
BILL NO. SB310

Members of the Senate Local Government Committee

This written testimony supports the changes proposed by Senator Shockley to amend the Title 76-3-608, which currently prohibit the protest provisions as a part of subdivision review process.

As a former local government administrator, and elected official I have seen this waiver of protest used to promote the public welfare, but now it is used as a club to stifle public debate and allow the imposition of additional fees and taxes without the individual's ability to protest the government's action.

Assume you have a 65-unit subdivision that requires a waiver of protest on all future action as a part of the subdivision review process. If the subdivision is approved with that provision on the face of the final plat those homeowners have given up their legal right of protest before they ever purchase a lot in that subdivision. With that provision on the face of the final plat local government can impose SIDs, a variety of taxing districts and additional costs that go along with homeowner costs without the ability of homeowners having the ability to protest the cost or need for such a new tax. In my view this violates the State's concept of "one man one vote".

Local governments need to justify to their constituents, that additional fees and taxes will result in a higher level of service, improved infrastructure, or a cleaner healthier environment. Local governments, in many instances, use the waiver of protest, as a means of raising revenue without necessarily providing the additional service that the fees will generate.

In Missoula, many times the waiver of protest is used to annex a subdivision into the city without necessarily providing the additional fire or police protection or other city services that go along with living in the city and paying higher city taxes. Many times the argument is made that hooking to the Municipal Sewer is safer for the groundwater, when in fact, a highly efficient septic system has a higher level of treatment. Without the ability to protest the government action the debate on this issue never takes place.

Many folks have talked about feeling left out of the public process and that their input is ignored or the decision is already made when a public hearing is held. With these waivers in place this is the case. Public participation is squelched and disconnect and distrust occurs between local government and the public.

The action proposed by Senator Shockley in SB310 is a small step, but I think it is a very important first step in reestablishing the interaction between the government and the citizens it serves. I urge the committee to pass these changes onto the full Senate.

Lawrence Anderson  
915 Parkview Way  
Missoula, MT 59803

Former Missoula County Commissioner, City Council Representative and Missoula  
Administrative Officer

## Hillview SID (542) 2007, UNFAIR AND INEQUITABLE

Violated the law that stipulates that assessment are to be “based on the benefits received.” (MAC 7-12-2151)

Total cost \$3.3 million assessed on 972 households when thousands drive on that road.

10 individuals would have paid almost 1/3, one million dollars  
Only 3 of those homeowners could protest, and they did.

90 would have paid another million

So, 100 out of 972 households would have paid 2 million

12 common areas created at the insistence of the city would have paid \$270,000

A number of homeowners' associations would have to pay the tax on lands they **no longer owned**

Houses adjacent to each other paid significantly different amounts

A health care facility with over 300 parking spaces paid \$25,000 in comparison to a neighbor with 2 lots who paid \$21,000.

A dirt track was assessed \$5,800, more than the assessment on 5 homes

Pat Tonkin a rancher who has lived in her home for 60 years was assessed \$145,000.

Another home owner was assessed \$300,000

My assessment was \$65,459. Even if spread over 10 years that would mean 500 dollars a month.

I among others would have been forced to sell my home.

Some who worked for the city or county were excluded when the boundaries of the district were redrawn

We were notified of only one public meeting

When objections were raised the meeting was abruptly terminated.

2 years earlier another SID of \$4.4 million had been levied

Taxes have doubled in 10 years in this area.

## **Support SB 310**

To get their subdivisions approved developers are forced to waive their rights of protest of future SIDs.

Those waivers remain on the land in perpetuity.

Those who buy the property are denied their constitutional right to protest taxes.

That means that future owners cannot protest SIDS such as road improvements, etc.

These waivers violate legislative intent since the Montana Annotated Code (7-12) provides that if a certain percentage of the landowners object to an SID, the measure cannot be passed.

Those who are subject to these waivers cannot file a protest and are counted as for the SID although they may be against it.

These waivers stack the deck in the local government's favor.

Protesting homeowners cannot get the necessary percentage to stop the SID, no matter how inequitable.

These waivers are not necessary. Local governments should not be able to impose measures against the will of the citizens.

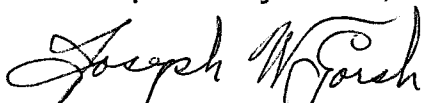
February 6, 2009

Joseph W Gorsh  
4511 Hillview Way  
Missoula, Montana  
406-251-6686

2009  
Montana State Legislature  
Helena, Montana

Dear Legislature,  
I respectfully ask you to pass SB-310.  
Twice I've been a party of what this bill is trying to correct. Anything you  
can do to lift the restriction of future owners to protest would be greatly  
appreciated.

Respectively Yours,

  
Joseph W. Gorsh

  
Barbara Wilson Gorsh

February 6, 2009

Montana State Legislature  
Helena, Montana

Re: Senate Bill 310

Honorable Members:

I'm in favor of SB 310 and support it's passage.

I bought a home in a subdivision in 1998. Two years ago, 2006 - 2007, an SID was proposed for major reconstruction of our primary street. The individual burden was in the tens of thousands of dollars. I raised my voice to say no, only to be told that the developer had given away my right to protest years earlier (1993) in exchange for a development permit. That's ludicrous, if not coercive.

Please pass SB 310.

Best premises,

A handwritten signature in black ink that reads "Mike Hegedus". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mike Hegedus  
4503 Hillview Way  
Missoula, MT 59803  
406-251-3433

February 8, 2009

2009 Montana Legislature

Re: Senate Bill No. 310

A bill for an act entitled: "An act prohibiting a waiver of right to protest as a condition of subdivision approval; and amending section 76-3-608, MCA."

We are in full support of Senate Bill No. 310. Please consider enacting this bill and the subsequent amendment to section 76-3-608, MCA. Doing so would ensure the constitutional rights of all Montana citizens.

Sincerely



Nancy A. McQuarrie  
1201 Landons Way  
Missoula, MT 59803



Rowan P. McQuarrie  
1201 Landons Way  
Missoula, MT 59803

(7) The developer shall include a statement on the subdivision plat which states that acceptance of a deed for a lot within this subdivision shall constitute the assent of the owners to any future SID/RSID, based on benefit, for upgrading the streets within the subdivision, including but not limited to paving, curbs and gutters, non-motorized facilities, street widening, and drainage facilities and may be used in lieu of their signatures on an SID/RSID petition.

(8) Within areas of Wildlands/Urban Interface the minimum unobstructed width shall not be less than twenty (20) feet and there shall be an unobstructed vertical clearance for roadways and bridges of thirteen (13) feet, six (6) inches, and the roadway shall be reviewed by the City Fire Chief for combustibility and emergency access, and approved by the Public Works Director, City Fire Chief, and governing body.

(9) Following are components used to arrive at the street widths presented in the previous two tables. The Public Works Director may allow variations to these widths where necessary.

	STANDARD WIDTH	VARIABLES THAT AFFECT WIDTH
TRAFFIC LANE (Exclusive of gutter):		
(1) Residential Streets:	(1)	
A. Local Streets - Extremely Low Volume	A. 9' traffic lane width for 3-6 units	Average daily trips (ADTs) Boulevards and Alleys Vehicle speed Emergency vehicle access Traffic calming Street maintenance Other constraints, such as hillsides, commercial traffic, etc.
B. Local Streets - Low Volume	B. 10' traffic lane width for 7-80 units	
C. Local Streets	C. 12' traffic lane width for 81-200 units	
(2) Collector/Commercial and Industrial Streets	(2) Width reviewed on a case by case basis.	
BICYCLE LANE (Required on streets which are functionally classified as collector streets or greater)	5' to gutter edge, or 12' when combined with parking lane.	Average daily trips (ADT's) Vehicle speed Whether parking is adjacent (See Guidelines found in the Non-Motorized Transportation Plan.)
PARKING (Inclusive of gutter) (Required on streets which are functionally classified as collector streets or greater)	8'	Average daily trips Vehicle speed Boulevards and Alleys Other constraints, such as hillsides, commercial traffic, etc.
CURB AND GUTTER	2'	

**CONDITIONS OF APPROVAL**  
**LANDON'S WAY SUBDIVISION**  
**NOVEMBER 28, 2005**

1. A boundary line relocation creating the 6.84 acre parcel proposed to be subdivided as Landon's Way shall be filed with the County Clerk and Recorder's Office prior to final plat approval. *Subdivision Regulations Article 3-1(1) and OPG recommendation.*

**Roads**

2. The following statement shall appear on the face of the plat and in each instrument of conveyance:

"Acceptance of a deed for a lot within this subdivision constitutes assent of the lot owner to waive the right to protest a future RSID/SID for improvements including but not limited to the installation of paving, drainage facilities, curbs and gutters, pedestrian walkways or bikeways to Hillview Way, Macie Way, Hunter Lane and Colter Court, based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors, and assigns of the owners of the land." *Subdivision Regulations Article 3-2(3)(E) and OPG recommendation.*

3. The developer shall file a development agreement requiring mitigation of road dust emissions enforceable through a lien, if necessary, to reimburse the City for expenses incurred, subject to review and approval by the City Attorney's Office, the City Public Works Department, and the Air Quality Division of the City/County Health Department prior to final plat filing. *Subdivision Regulations Article 3-2(1)(E), City Attorney's Department, City-County Health Department, and OPG recommendation.*
4. A one foot no-access strip shall be located on the final plat along the Macie Way frontage of Lots 1 and 9 and the Hunter Lane frontage of Lots 6 through 9, except that Lot 9 may be located on the City Engineer approval. *Subdivision Regulations Article*

**MERCHANTABLE TITLE:** If the Seller title is not merchantable and cannot be made merchantable before the stated closing date, 10 ADDITIONAL DAYS SHALL BE ALLOWED FOR THE SELLER TO MAKE SUCH TITLE MERCHANTABLE. If title is not merchantable after additional specified time, this Agreement is terminated, unless Buyer elects to waive defects and proceed to closing. The parties may agree to negotiate alternative terms or provisions. Encumbrances to be discharged by the Seller shall be satisfied prior to closing or from Seller's proceeds at the time of closing.

**SPECIAL IMPROVEMENT DISTRICTS:** Special Improvement Districts (including rural SIDs), including those that have been noticed to Seller by City/County, but not yet spread or currently assessed, if any, will be:

any ☒ paid off by Seller at closing NO SIDS WITHIN MTN SHADOWS WEST  
any ☐ assumed by Buyer at closing, OR  
any ☒ SELLER + BUYER WAIVE "RIGHT TO PROTEST" FUTURE SIDS ON HILLVIEW WAY

All perpetual SIDs shall be assumed by Buyer.  
**PRORATION OF TAXES AND ASSESSMENTS:** Seller and Buyer agree to prorate taxes, Special Improvement District assessments for the current tax year, as well as pre-paid rents, water and sewer system charges, heating fuel and tank rental, irrigation assessments, Homeowner's Association dues and/or common maintenance fees, if any, as of the date of closing, unless otherwise agreed and:

APRIL 15, 1997

**CLOSING DATE:** The date of closing shall be not later than Sept. 2, 1997. The parties may, by mutual agreement, agree to close the transaction at any time prior to the date specified. The Buyer and Seller will deposit with the closing agent all instruments and monies necessary to complete the purchase in accordance with this Agreement.

**POSSESSION:** Seller shall deliver to Buyer possession of the property and allow occupancy:  
☒ on the date of closing, OR  
☐ on the date of recording the Deed, Notice of Purchaser's Interest, OR  
☐ other \_\_\_\_\_

Property shall be vacant unless otherwise agreed in writing. Seller shall provide keys and/or means to operate locks, mailboxes, security systems, alarms, garage door opener(s), and Homeowner's Association facilities, if applicable.

**CONDITION OF PROPERTY:** Seller agrees that the Property shall be in the same condition, normal wear and tear excepted, from the date of the execution of this Agreement up to the time Buyer takes possession of the Property. Seller agrees to leave the Property in broom clean or better condition and allow Buyer a walk-through inspection of said Property prior to closing to insure that all appurtenances and appliances included in the sale remain on the Property.

**RADON DISCLOSURE STATEMENT:** The following disclosure is given pursuant to the Montana Radon Control Act, Montana Code Annotated Section 75-3-606.

**RADON GAS:** RADON IS A NATURALLY OCCURRING RADIOACTIVE GAS THAT, WHEN IT HAS ACCUMULATED IN A BUILDING IN SUFFICIENT QUANTITIES, MAY PRESENT HEALTH RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER TIME. LEVELS OF RADON THAT EXCEED FEDERAL GUIDELINES HAVE BEEN FOUND IN BUILDINGS IN MONTANA. ADDITIONAL INFORMATION REGARDING RADON AND RADON TESTING MAY BE OBTAINED FROM YOUR COUNTY OR STATE PUBLIC HEALTH UNIT.

If the property has been tested for radon, the Seller will provide a copy of the test results concurrent with an executed copy of this Agreement. If the property has received radon mitigation treatment, the Seller will provide the evidence of the mitigation treatment concurrent with an executed copy of this Agreement.

**BUYER'S REMEDIES:** (A) If the Seller fails to accept the offer contained in this Agreement within the time period provided in the BUYER'S COMMITMENT section, all earnest monies shall be returned to the Buyer. (B) If the Seller accepts the offer contained in this Agreement, but refuses or neglects to consummate the transaction within the time period provided in this Agreement, the Buyer may:

- (1) Demand immediate repayment of all monies that Buyer has paid as earnest money, and upon the return of such money, the rights and duties of Buyer and Seller under this Agreement shall be terminated, OR
- (2) Demand that Seller specifically perform Seller's obligation under this Agreement; OR
- (3) Demand monetary damages from Seller for Seller's failure to perform the terms of this Agreement.